

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

E.R.K., by his legal guardian
R.K., R.T.D., through his
parents R.D. and M.D.; HAWAII
DISABILITY RIGHTS CENTER,
in a representative capacity on
behalf of its clients and all
others similarly situated,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION,
State of Hawaii,

Defendant.

Case No. 10-00436 SOM-KSC

**MEMORANDUM IN SUPPORT
OF MOTION**

MEMORANDUM IN SUPPORT

I. INTRODUCTION

After several years of discussions and negotiations under close supervision by Magistrate Judge Kevin S. C. Chang, the parties have reached an agreement under which the Department of Education of the State of Hawaii will establish a \$10,250,000 fund to provide compensatory education, including assistive technology, to the class members.

The fund is to be administered by a settlement administrator, chosen by the Court, and assisted by Class Counsel for the next three (3) years.

Net of the administrator's fees and expenses, past attorneys' fees and expenses, and future attorneys' fees and expenses, the settlement will yield (with the interest earned on the Fund) approximately \$8 million in benefits to the Class (now estimated to comprise approximately 505 students).¹

II. THE SETTLEMENT FUND INCLUDES AMOUNTS FOR THE ADMINISTRATOR AND FOR LEGAL FEES

The settlement includes \$300,000 plus GET for the administrator's fees and expenses. It is expected that the administrator will determine the needs of each class member and allocate appropriate amounts for his/her future services using a tiered system approved by Magistrate Judge Chang.

The settlement also provides an award of \$1,500,000.00 as part of the total fund for the past attorneys' fees and costs incurred by Class Counsel. This amount is less than the lodestar;

¹ Assuming the fund is expended at a steady pace of over 3 years and the funds on deposit earn 2% per year, the interest earned will be approximately \$250,000.

the amount of the fund for the class members was increased to include fees in order to facilitate the necessary approval process. In addition, subject to future review and approval by the Court, the fund includes for up to \$250,000, not inclusive of GET, for future services in support of the class members' efforts to obtain suitable services, including assistive technology.

III. IMMEDIATE APPROVAL IS REQUESTED

Because (1) this class was certified under FRCP 23(b)(2), (2) the settlement was negotiated directly under the supervision of the Magistrate Judge, (3) the delivery of services should begin without further delay, and (4) the State of Hawai'i is prepared to fund the initial installment of the settlement (\$8,750,000) before year-end if the settlement is timely approved, the Parties jointly request immediate approval of this settlement.

IV. CONCLUSION

This motion should be granted immediately.

DATED: Honolulu, Hawai'i, December 5, 2017.

/s/ PAUL ALSTON

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